

## Internal Revenue Service

Number: **201024026**

Release Date: 6/18/2010

Index Number: 1001.00-00, 2501.00-00,  
2601.00-00

## Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-140633-09

Date:

March 08, 2010

Re:

### LEGEND

Trust =

Parent =

Family Member 1 =

Family Member 2 =

Family Member 3 =

Employees =

Charity A =

Charity B =

Original Trustee =

Successor Trustee =

Law Firm =

A =

B =

Corporate Trustee =

State Statute =

Child 1 =

Child 2 =

Grandchild 1 and spouse =

Grandchild 2 and spouse =

Grandchild 3 and spouse =

Grandchild 4 and spouse	=
Grandchild 5	=
Great-grandchild	=
Charitable Subtrust	=

Divided Trust A	=
-----------------	---

Divided Trust 1	=
-----------------	---

Divided Trust 2	=
-----------------	---

Divided Trust 3	=
-----------------	---

Divided Trust 4	=
-----------------	---

Divided Trust 5	=
-----------------	---

Group	=
-------	---

State	=
Court	=

Primary Asset	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=

Dear :

This responds to the September 4, 2009 letter from your authorized representative, requesting rulings on the income, gift, estate and generation-skipping transfer (GST) tax consequences of a proposed division of Trust and Charitable Subtrust.

The facts and representations are as follows. Parent irrevocably created Trust on Date 1,

prior to September 25, 1985. It is represented that no additions, constructive or otherwise, have been made to Trust after September 25, 1985.

The Trust agreement includes the following provisions. Section 1.05(3) provides that the rules of law and the statutes of State are to govern in the validity, interpretation, and enforcement of the Trust agreement and the administration of each trust thereunder.

Paragraph 3.02 provides that payment of any benefits, whether principal, income, or otherwise, shall be made in the sole discretion of the trustees. Amounts of net income, capital gains or other amounts of principal not paid to a beneficiary are to be accumulated and added to principal. Payments of income or principal determined by the trustees, if any, except as made to potential charitable beneficiaries, shall be made only among the members of the lowest numbered class, as defined in Section 3.03(1), which at the time of payment has one or more living individual beneficiaries (Individual Beneficiaries). The payments among the members of a class of Individual Beneficiaries and charitable beneficiaries need not be equal and may be to one, to all, or to any number of members, as the trustees determine, in their sole discretion.

Paragraph 3.03 provides that payments of income, principal or otherwise may be made to any one or more members of the lowest numbered of the classes of Individual Beneficiaries described in Section 3.03(1) which has one or more members then living and/or to any one or more members of the class of charitable beneficiaries described in Section 3.03(2).

Section 3.03(1) defines the potential Individual Beneficiaries as:

- (i) Class One: The issue of Parent then living, and all spouses of then living or deceased issue of Parent; or
- (ii) Class Two: The issue of Family Member 1 then living, and all spouses of then living or deceased issue of Family Member 1;
- (iii) Class Three: The issue of Family Member 2 and Family Member 3 who are then living, and all spouses of then living or deceased issue of Family Member 2 and Family Member 3; or
- (iv) Class Four: The persons who would be the heirs-at-law of the last survivor of all members of Class One who leaves heirs then living; if there are no such heirs, then such heirs of the last survivor of Class Two who leaves heirs then living; if there are no such heirs, then such heirs of the survivor of Class Three who leaves heirs then living; or
- (v) Class Five: Certain employees (the Employees).

Section 3.03(2) provides that the potential charitable beneficiaries shall include Charity A and

Charity B (so long as they are organized and operated exclusively for the purposes described in § 501(c)(3) of the Internal Revenue Code), and such of a group consisting only of corporations, associations and institutions organized and operated exclusively for religious, charitable, literary, and educational purposes and described in § 501(c)(3).

Section 3.03(4) provides that the trustees may make a complete distribution of all Trust assets at any time. In the event final distribution is determined by the trustees or legally required under Paragraph 4.01 or otherwise, distribution will be made by the trustees to any or all members of the class of Individual Beneficiaries and charitable beneficiaries then eligible under the provisions of Article 3, as determined by the trustees, in their sole discretion.

Paragraph 4.01 provides that Trust, if not sooner terminated pursuant to complete distribution, is to terminate twenty-one years after the death of the survivor of all persons described as potential Individual Beneficiaries in Classes One to Three inclusive, determined at the date of the execution of the Trust agreement. Any assets governed by a rule of law of situs under which termination at the date prescribed would render Trust invalid are to be distributed on the last date on which the assets can validly remain in trust. It is Parent's intent that Trust be permitted to endure in perpetuity.

Paragraph 4.05 provides that all determinations to make, apply, withhold or accumulate any discretionary payments or distributions of income or principal shall be made only by the trustees then acting who are not "related or subordinate parties" as to Parent, within the meaning of § 672(c), or who are not within the definition of Individual Beneficiaries and charitable beneficiaries eligible at the time of the determination

Paragraph 5.01 provides that if Original Trustee ceases to be trustee, he shall be replaced by Successor Trustee. If Successor Trustee ceases to serve, he or his successor shall be replaced by the partner, associate or member of Law Firm as designated by two partners of Law Firm. The power of designation shall be exercised by Law Firm as often as there may be a vacancy in the trusteeship originally filled by Original Trustee and Successor Trustee so that, except as specifically provided to the contrary, there will always be a partner, associate, or member of Law Firm serving with the remaining trustees or trustee.

Paragraph 5.01 provides that the individual trustee or trustees (as distinguished from the corporate trustee) may appoint one or more individual trustees, or a corporate trustee, or one or more individual trustees and a corporate trustee to act with the trustee or trustees then acting, and also the further power to determine that any partner, associate, or member of Law Firm shall never serve as trustee, thus completely nullifying the further service or succession by any member or appointee of Law Firm. In the event no trustee is acting, a trustee or trustees of the type which might be appointed by individual trustees shall be appointed by a majority of the adult potential Individual Beneficiaries in the lowest numbered Class which contains any such Individual Beneficiaries, as defined in Section 3.03(1). The power of appointment shall not be exercised in such manner as to result either (i) in Parent's becoming a trustee, or (ii) in all of the trustees being "related or subordinate parties" as to

Parent within the meaning of section 672(c).

Section 5.04(9) provides that the trustees may divide Trust, determining values and designating particular assets for beneficiaries, assign like or unlike properties to different beneficiaries or trusts, and make distribution and payments in cash or in kind or in both. A and B are the present trustees of Trust. Corporate Trustee is a limited trustee with no power to make discretionary distributions. The situs of Trust is State. Under the terms of Trust and the law of State, Trust is to continue until the earlier to occur of: (i) the trustees' complete distribution of the Trust assets, or (ii) 21 years after the death of the last survivor of the persons named in Group.

The trustees of Trust requested a private letter ruling regarding the creation and funding of a revocable charitable subtrust of Trust. The private letter ruling was issued on Date 2. On Date 3, pursuant to the letter ruling, the trustees created the revocable charitable subtrust (Charitable Subtrust).<sup>1</sup> A and B are the trustees of Charitable Subtrust.

Currently, income and principal of Trust may be distributed to the members of Class One, i.e., the living issue of Parent and the spouses of the living or deceased issue of Parent. In addition, income and principal may be distributed to the charitable beneficiaries.

Parent had two children, Child 1 and Child 2. Child 1 is x years old, is unmarried, and has no issue. Child 2 is married and has five adult children. Child 2's five adult children are: Grandchild 1, Grandchild 2, Grandchild 3, Grandchild 4, and Grandchild 5. Four of the adult children are married. Child 2 has one grandchild (Great-grandchild).

---

<sup>1</sup> The Charitable Subtrust agreement includes the following provisions:

Paragraphs 2.01 and 2.02: The trustee may amend the agreement, but it shall not be effective without the consent of the trustee of Trust. The trustee of Trust may at any time revoke Charitable Subtrust.

Paragraph 2.03: The trustee may not accept contributions from any person or entity other than the trustee of Trust.

Paragraph 3.01: Unless sooner terminated by a complete distribution of the assets, Charitable Subtrust will terminate on the date required for the termination of Trust, and the remaining Charitable Subtrust assets will be distributed to Trust, and added to and disposed of as part of the general Trust estate under the Trust agreement.

Paragraph 3.02: The payment or accumulation of any amount is vested in the sole discretion of the trustee. Payments determined by the trustee shall be made only to charitable beneficiaries.

Section 3.03(1): The potential charitable beneficiaries shall be Charity A, Charity B, and such of a group as may be selected by the trustee, in the trustee's sole discretion, consisting only of corporations, associations, and institutions that are: (1) organized and operated exclusively for religious, charitable, literary or educational purposes, (2) described in §§ 170(c), 642(c) and 501(c)(3), and (3) exempt from taxation under § 501(a).

Paragraph 5.01: The individual trustee (as distinguished from a corporate trustee) of Trust shall have the power to appoint cotrustees or successor trustees of Charitable Subtrust. Any cotrustee or successor trustee may be removed by at any time by the trustee of Trust.

Proposed transaction

Trust will be divided into six separate shares (Divided Trusts). One-half of the Trust assets and liabilities will be held as a Divided Trust for the benefit of the Child 1 family line (Family Line). The other one-half of the Trust assets and liabilities will be divided into five approximately equal Divided Trusts, with a respective Divided Trust held for a respective Family Line of a child of Child 2. A person's Family Line will consist of the person, the person's spouse, the person's issue, and the spouses of the person's issue.

The distribution to the Divided Trusts will be on a pro rata basis to the extent practical. For instance, the trustees will divide the primary asset (Primary Asset) of Trust strictly pro rata. The division will be adjusted to account for modest prior distributions made to certain Individual Beneficiaries in Class One.

The Divided Trusts will have the same dispositive, termination, allocation, and administrative provisions as Trust except that Section 3.03(1)(i) of the Divided Trust for Child 1's Family Line will limit the Individual Beneficiaries of Class One to Child 1, Child 1's spouse (if any), Child 1's issue (if any) and the spouses (if any) of Child 1's issue. Likewise, Section 3.03(1)(i) of a respective Divided Trust for the Family Line of a child of Child 2 will limit the Individual Beneficiaries of Class One to the respective child, the child's spouse, the child's issue, and spouses of the child's issue. Child 2 and Child 2's spouse will also be beneficiaries of the five Divided Trusts held for the Family Lines of Child 2's children.

Accordingly, Trust will be divided into: (i) Divided Trust A for the Child 1 Family Line, (ii) Divided Trust 1 for the Grandchild 1 Family Line, (iii) Divided Trust 2 for the Grandchild 2 Family Line, (iv) Divided Trust 3 for the Grandchild 3 Family Line, (v) Divided Trust 4 for the Grandchild 4 Family Line and (vi) Divided Trust 5 for the Grandchild 5 Family Line.<sup>2</sup>

The assets and liabilities of Charitable Subtrust will be divided into five equal shares (Divided Charitable Subtrusts) with a respective Divided Charitable Subtrust associated with a respective Divided Trust created for the Family Line of a child of Child 2. It is not expected that there will be a charitable subtrust relating to Divided Trust A. The Divided Charitable Subtrusts will have the same provisions as Charitable Subtrust except that the powers to amend, revoke, etc., a particular Divided Charitable Subtrust will be exercisable by the

---

<sup>2</sup> Each Divided Trust will provide that, if all the members of a particular Family Line are deceased, the Divided Trust for that Family Line will terminate. Its assets and liabilities will be allocated among Grandchild 2's then living issue, per stirpes, by distribution to the Divided Trust held for the benefit of that issue or to a separate trust with the same terms and trustee as the Divided Trust for that issue. If the last surviving member of Child 2's Family Line dies during the Trust term, the assets of the Divided Trusts held for Child 2's Family Line may be administered for the benefit of the Class Two Individual Beneficiaries (Child 1's Family Line) or distributed to Divided Trust A (for the benefit of Child 1's Family Line).

trustees of the Divided Trust to which it is associated.

Trust is administered under the laws of State. Under State Statute, a trustee may divide a trust into two or more trusts if it is in the best interests of all persons interested and will not substantially impair accomplishment of the purposes of the trust.

On Date 4, pursuant to the trustees' petition, Court issued an order authorizing the proposed division. The order is subject to receipt of a favorable private letter ruling from the Internal Revenue Service.

You have asked for the following rulings:

- (1) The Divided Trusts and Divided Charitable Subtrusts will be exempt from the GST tax.
- (2) The division will not cause any of Parent's issue or any member of their respective Family Lines to be treated as having made a transfer subject to gift tax.
- (3) The division will not cause the assets of the Divided Trusts or Divided Charitable Subtrusts to be includible in the gross estate of any of Parent's issue or any member of their respective Family Lines, for estate tax purposes.
- (4) The allocation of assets and liabilities of Trust and Charitable Subtrust will not cause Trust, the Divided Trusts, Charitable Subtrust, the Divided Charitable Subtrusts, Parent's issue, or any member of their respective Family Lines to recognize any ordinary income or loss or capital gain or loss, for income tax purposes.
- (5) The adjusted basis of the assets received by the Divided Trusts and Divided Charitable Subtrusts will be the same as the respective adjusted basis of the assets held by Trust and Charitable Subtrust, for purposes of § 1015.
- (6) The holding periods of the assets received by the Divided Trusts and Divided Charitable Subtrusts will be the same as the holding periods of the assets in Trust and Charitable Subtrust, for purposes of § 1223(2).

#### Issue 1

Section 2601 imposes a tax on every generation-skipping transfer (GST), which is defined under § 2611 as a taxable distribution, a taxable termination, or a direct skip.

Section 1433(b)(2)(A) of the Tax Reform Act of 1986 (the Act), 1986-3 (Vol. 1) C.B. 1, and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations provide that the generation-skipping transfer tax shall not apply to any generation-skipping transfer under a trust that was irrevocable on September 25, 1985, but only to the extent that the transfer was not made out of corpus added to the trust after September 25, 1985 (or out of income

attributable to corpus so added).

Section 26.2601-1(b)(4) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the generation-skipping transfer tax under § 26.2601-1(b)(1), (b)(2), or (b)(3), will not cause the trust to lose its exempt status. The rules of § 26.2601-1(b)(4) apply only to determine whether an exempt trust retains its exempt status for generation-skipping transfer tax purposes. They do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of capital gain for purposes of § 1001.

Section 26.2601-1(b)(4)(i)(D) provides that a modification of the governing instrument of an exempt trust by judicial reformation or nonjudicial reformation that is valid under applicable state law will not cause an exempt trust to be subject to the provisions of Chapter 13, but only if: 1) the modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification, and (2) the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. A modification of an exempt trust will result in a shift in a beneficial interest to a lower generation beneficiary if the modification can result in either an increase in the amount of a generation-skipping transfer or the creation of a new generation-skipping transfer.

Section 26.2601-1(b)(4)(i)(E), Example 5, illustrates a situation where a trust that is otherwise exempt from the GST tax is divided into two trusts. Under the facts presented in the example, the division of the trust into eight trusts does not shift any beneficial interest in the trust to a beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interests prior to the division, and the division does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust.

In this case, Trust was irrevocable on September 25, 1985, and it is represented that no additions have been made since September 25, 1985. Based on the facts presented and the representations made, the division of Trust into the Divided Trusts and Charitable Subtrust into the Divided Charitable Subtrusts, as described above, will not result in a shift of any beneficial interest to any beneficiary who occupies a generation lower than the persons holding the beneficial interests prior to the division. Further, the proposed division will not extend the time for the vesting of any beneficial interest in the new trusts beyond the period provided for under the original trust. Accordingly, the Divided Trusts and Divided Charitable Subtrusts will not be subject to the provisions of Chapter 13.

## Issue 2

Section 2501 imposes a tax for each calendar year on the transfer of property by gift during such calendar year by any individual.



Section 2511 provides that the gift tax applies whether the transfer is in trust or otherwise, direct or indirect, and whether the property transferred is real or personal, tangible or intangible.

Section 2512(a) provides that if the gift is made in property, the value thereof at the date of the gift is considered the amount of the gift.

Section 2512(b) provides that where property is transferred for less than an adequate consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration is deemed a gift that is included in computing the amount of gifts made during the calendar year.

The division of Trust and Charitable Subtrust, as described above, will not result in any change in the beneficial interests of any of the beneficiaries. Accordingly, based on the facts submitted and representations made, the division will not cause any of Parent's issue or any member of their respective Family Lines to be treated as having made a transfer subject to gift tax.

### Issue 3

Section 2036 provides, generally, that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death: (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

Section 2037 provides, generally, that the value of the gross estate shall include the value of property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth) if: (1) possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the decedent, and (2) the decedent has retained a reversionary interest in the property, and the value of the reversionary interest immediately before the decedent's death exceeds five percent of the value of the property.

Section 2038(a)(1) provides, generally, that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power (in whatever capacity) by the decedent alone or in conjunction with any other person (without

regard to when or from what source the decedent acquired such power) to alter, amend, revoke, or terminate, or where any such power is relinquished during the 3-year period ending on the date of the decedent's death.

Sections 2036 and 2037 provide for inclusion of property in a decedent's gross estate if the decedent gratuitously transferred the property during life and retained certain rights, powers, or interests with respect to the property. Under § 2038, the transferred property is includible in the decedent's gross estate if the decedent held certain rights or powers at death. Thus, the estate tax inclusion provisions of §§ 2036 through 2038 apply only in the case of property transferred by the decedent during life.

In this case, the division of Trust and Charitable Subtrust will not constitute a transfer of property, for purposes of §§ 2036 through 2038, by any of Parent's issue or a member of their respective Family Lines. The trust beneficiaries will have the same interests after the division as they had prior to the division. We therefore conclude that the division of Trust into the Divided Trusts (and the division of Charitable Subtrust into the Divided Charitable Subtrusts) will not cause the trust assets to be includible in the gross estate of any of Parent's issue or any member of their respective Family Lines under §§ 2036 through 2038.

Section 2041(a)(2) provides that the value of the gross estate shall include the value of all property to the extent of any property with respect to which the decedent has at the time of death a general power of appointment, or with respect to which the decedent has at any time exercised or released such a power of appointment by a disposition that is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under §§ 2035 to 2038, inclusive.

Section 2041(b)(1)(A) provides that a general power of appointment is a power that is exercisable in favor of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate. However, a power to consume, invade, or appropriate property for the benefit of the decedent that is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent shall not be deemed a general power of appointment.

Section 20.2041-1(b)(1) of the Estate Tax Regulations provides that a power in a decedent to remove or discharge a trustee and appoint himself may be a power of appointment. For example, if under the terms of a trust, the trustee or his successor has the power to appoint the principal of the trust for the benefit of individuals including himself, and the decedent has the unrestricted power to remove or discharge the trustee at any time and appoint any other person including himself, the decedent is considered as having a power of appointment.

Rev. Rul. 79-353, 1979-2 C.B. 325, held that the value of property transferred to a trust is includible in the decedent-grantor's gross estate, under §§ 2036(a)(2) and 2038(a)(1), if the grantor retains the power to remove the corporate trustee, without cause, and appoint another corporate trustee, and the trustee is endowed with broad discretionary powers. In

Rev. Rul. 81-51, 1981-1 C.B. 458, the Service announced that Rev. Rul. 79-353 would be applied prospectively only. Specifically, Rev. Rul. 81-51 held that, if on or before October 28, 1979 (the date of publication of Rev. Rul. 79-353), a grantor transferred property to an irrevocable trust, and retained the power to remove, at will, and replace the corporate trustee with another corporate trustee, no estate tax consequences will result on account of the retained removal and replacement power.

The Service reconsidered the position on this issue in Rev. Rul. 95-58, 1995-2 C.B. 191. This ruling revoked Rev. Rul. 79-353 and Rev. Rul. 81-51 and holds that a decedent-settlor's reservation of an unqualified power to remove a trustee and appoint an individual or corporate successor trustee that is not related or subordinate to the decedent, within the meaning of § 672(c), is not considered a reservation of the trustee's discretionary power of distribution over the property transferred by the decedent-settlor to the trust. Although Rev. Rul. 79-353 and Rev. Rul. 81-51 were revoked, a trust that was exempt from the application of Rev. Rul. 79-353 by reason of Rev. Rul. 81-51 does not lose this exemption even if the trust otherwise fails to meet the standard set forth in Rev. Rul. 95-58.

In this case, an Individual Beneficiary may become a trustee of a Divided Trust held for his or her Family Line. However, under Paragraph 4.05 of Trust, he or she may not participate in any trustee decisions regarding discretionary distributions or as to the assets making up a distributive share. Thus, the Individual Beneficiary would have no power to pay (directly or indirectly) trust principal or income to himself or herself. Consequently, an Individual Beneficiary will not be regarded as possessing a general power of appointment solely as a result of his or her serving as a trustee.

Further, there are circumstances, under Paragraph 5.01, in which an Individual Beneficiary may possess the power to remove, at will, and replace the trustees of the Divided Trust held for his or her Family Line. Although Paragraph 5.01 does not include the standards of Rev. Rul. 95-58 for exercising the replacement power, the exemption provided by Rev. Rul. 81-51 is applicable as Trust was created and funded before October 29, 1979. Therefore, an Individual Beneficiary will not be considered to have a general power of appointment, within the meaning of § 2041(a)(2), solely by reason of possessing a power to remove and replace the trustees.

#### Issue 4

Section 61(a) defines gross income as "all income from whatever source derived." Under § 61(a)(3), gross income includes "[g]ains derived from dealings in property."

Section 1001(a) provides that the gain from the sale or other disposition of property is the excess of the amount realized over the adjusted basis provided in § 1011 for determining gain, and the loss is the excess of the adjusted basis provided in § 1011 for determining loss over the amount realized. Under § 1001(c), the entire amount of gain or loss must be recognized, except as otherwise provided.

Section 1.1001-1(a) of the Income Tax Regulations provides that, except as otherwise provided in subtitle A of the Code, the gain or loss realized from the exchange of property for other property differing materially either in kind or in extent is treated as income or as loss sustained.

Under § 1.1001-1(h)(1), the severance of a trust, occurring on or after August 2, 2007, is not an exchange of property for other property differing materially either in kind or in extent, if (i) an applicable state statute or the governing instrument authorizes or directs the trustee to sever the trust; and (ii) any non-pro rata funding of the separate trusts resulting from the severance, whether mandatory or in the discretion of the trustee, is authorized by an applicable state statute or the governing instrument.

In the present case, Trust and Charitable Subtrust will be severed into the Divided Trusts and the Divided Charitable Subtrusts on a pro rata basis to the extent practical. The dispositive provisions of each Divided Trust agreement are the same as those of the Trust agreement. Similarly, the dispositive provisions of each Divided Charitable Subtrust agreement are the same as those of the Charitable Subtrust agreement.

The proposed severance of Trust is authorized by the Trust agreement. The proposed severance of Charitable Subtrust is authorized by the Charitable Subtrust agreement. In addition, applicable State Statute permits both severance transactions.

The severance of a trust occurring on or after August 2, 2007, is not an exchange of property for other property differing materially in kind or in extent, if the severance satisfies the criteria set forth in § 1.1001-1(h)(1). The proposed severance of Trust and Charitable Subtrust satisfies those criteria. Accordingly, the severance of Trust and Charitable Subtrust, accompanied by the (pro rata or non-pro rata) funding of the Divided Trusts and Divided Charitable Subtrusts resulting from the severance, does not constitute an exchange of property for other property differing materially in kind or in extent under §§ 61 and 1001.

#### Issue 5

Section 1015 provides that the basis in property acquired by a transfer in trust is the same as it would be in the hands of the grantor, with adjustments for gain and loss recognized. The basis in the assets in the trusts will be determined under § 1015. In this case, the basis of each trust asset in the hands of the surviving trusts will be the same as the basis of each such asset in the dividing trust prior to the division.

#### Issue 6

Section 1223 provides that in determining the period for which the taxpayer has held property however acquired, there shall be included the period for which the property was held by any

other person, if the property has the same basis in whole or in part in the taxpayer's hands as it would have in the hands of that other person.

Since the division of Trust and Charitable Subtrust is not a sale or other disposition of property, and the property has the same basis in the hands of the resulting Divided Trusts and Divided Charitable Subtrusts as it would have had in the hands of Trust and Charitable Subtrust, the holding periods of the assets in the hands of the Divided Trusts and Divided Charitable Subtrusts will include the holding periods of the assets in the hands of Trust and Charitable Subtrust pursuant to § 1223(2).

The rulings in this letter pertaining to the federal estate and/or generation-skipping transfer tax apply only to the extent that the relevant sections of the Code are in effect during the period at issue. Except as specifically ruled upon above, we express no opinion as to the tax consequences of the transaction described above under the cited provisions of the Code or under any other provisions of the Code.

The rulings in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely yours,

James F. Hogan  
Chief, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures  
Copy for § 6110